IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 368 OF 2004

1. Shri Vaman Gopal Raut,
aged about 60 years, agriculturist,
resident of Madhlavada, Sal
Bicholim, Goa (since expired through
his legal representatives):

a. Gopal Vaman Raut,
b. Deepali Gopal Raut,
c. Sandeep Vaman Raut,
d. Geeta Sandeep Raut,
e. Ghanasham Vaman Raut,
f. Meghashyam Vaman Raut,
g. Manish Vaman Raut.

2. Smt. Laxmi Vaman Raut,
aged about 55 years, housewife,
All residents of Madhalawada,
Sal, Bicholim – Goa. ..... Petitioners.

V/s.

1. Shri Chandru alias Chandrakant
Krishna Raut, aged 70 years,
agriculturist, r/o. Madhlavada,
Sal, Bicholim, Goa (since deceased
through his legal representatives).

a. Rama Chandru Raut, major, son
b. Reshma Rama Raut, major,
c. Krishna Chandru Raut,
d. Rekha Krishna Raut, major,
L.R. No.1a to 1d are r/o. Madhlavada,
Sal, Bicholim, Goa.

e. Mrs. Madhuri G. Naik, major,
f. Gurudas Mukund Naik,
both r/o. Mencurem, Bicholim, Goa.

2. Shri Ladu Laxman Raut,
major, agriculturist, r/o. Sal,

Madhlavada, represented by duly constituted attorney of his brother Shri Suresh Laxman Raut, major, service, r/o. Madhlavada, Sal, Bicholim, Goa.
(This petition stands dismissed as against R.No.2, in view of Order dated 5.11.04 passed by this Court.)

3. Shri Shataram Budho Raut, major, agriculturist, r/o. Madhlavada, Sal, Bicholim, Goa. ..... Respondents.

Mr. V.R. Tamba, Advocate for the petitioners.

Mr. V.A. Lawande, Advocate for respondents No.1(a) to 1(f).

CORAM : A.P. LAVANDE, J.

Date of reserving the Order : 4th March, 2005.

Date of pronouncing the Order : 11th March, 2005.

O R D E R :

By this petition, the petitioners who are the defendants in Regular Civil Suit No. 39/96/C pending before the Civil Judge, Jr. Division, Bicholim, challenge order dated 3rd July, 2004, passed by the learned Judge, allowing the plaintiffs to file written statement to the counter claim made by the defendants in the said suit, subject to payment of costs of Rs.300/- .

2. This petition was adjourned from time to time for hearing on

admission. On 18.2.2005, the learned Counsel appearing for the petitioner stated that respondent No.2 who is the plaintiff in the suit, had expired and sought time to take appropriate steps and at the request of the learned Counsel, the matter was adjourned to 4th March, 2005. When the matter was called on 4.3.2005, it was noticed that no steps have been taken by the petitioners pursuant to Order dated 18.2.2005. Mr. Tamba, learned Counsel sought further time to take appropriate steps in the matter. The present petition stood dismissed as against respondent No.2 for failure to take steps to serve respondent No.2. As such, the question of bringing the legal representatives of respondent No.2 in the present petition does not arise at all. However, the petitioners are at liberty to file appropriate application in the trial Court, if they so desire.

3. Mr. Tamba, learned Counsel appearing for the petitioners submitted that the trail Court was absolutely not justified in permitting the plaintiffs to file written statement to the counter claim made by the defendants. According to the learned Counsel, the reasons given by the trial Court to permit the plaintiffs to file written statement are untenable in law. Mr. Tamba has relied upon the following Judgments :

(a) ***Siai Sinha v. Shivadhari Sinha and ors.*** (AIR 1972 PATNA 81);

(b) Yeshwant Siuram Porobo and ors. v. Gangarama Loximona Shet Gaunkar and ors. (1990(2) Goa L.T.220);

(c) ***M/s. Tarkeshwara Hatcheries and anr. v. State Bank of India and anr.*** (AIR 1994 P & H 10).

4. Mr. Lawande, learned Counsel appearing for respondents No.1 (a) to 1(f) has submitted that substantial justice has been done by the impugned order and this is not a fit case in which this Court should exercise jurisdiction under Article 227 of the Constitution to set aside the impugned order. I have considered the submissions made by the learned Counsel for the parties and I have also gone through the authorities relied upon by the learned Counsel for the petitioners. By the impugned Order, the plaintiffs have been permitted to file written statement to the counter claim filed by the defendants. Although the learned trial Court has not given very cogent reasons for allowing the plaintiffs to file the written statement, yet the fact remains that the trial Court has exercised its discretion and permitted the plaintiff to file written statement, subject to payment of costs of Rs.300/- . Hence, it cannot be said that by the impugned order any failure of justice has occasioned or there is any error of jurisdiction or any error of law apparent on the face of record, so as to warrant interference in exercise of writ jurisdiction. I am of the opinion that having regard to the principles laid down by the Apex Court in the case of ***Surya Dev Rai vs. Ram Chander Rai and ors.*** (2003) 6 SCC 675), this is not a fit case in which the impugned order deserves to be set aside in exercise of writ

jurisdiction.

5. In the result, therefore, I do not find any merit in this petition and, therefore, the same is summarily rejected with no order as to costs.

A.P. LAVANDE, J.

ssm.